

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--|-------------------------------------|---------------------------|--|---|--|
| Investigator: Julian Phillips | Team: Squad #5 | CCRB Case #: 201907896 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 08/28/2019 10:25 AM | Location of Incident: § 87(2)(b) | Precinct: 47 | 18 Mo. SOL 2/28/2021 | EO SOL 10/15/2021 | |
| Date/Time CV Reported Wed, 08/28/2019 7:20 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Fri, 09/06/2019 11:06 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |
| | |
| | |
| | |
| | |
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------------|--------|--------|---------|
| 1. POM David Cooper | 21588 | 959567 | 047 PCT |
| 2. POM Kermar Mckenzie | 20185 | 958909 | TB DT12 |
| 3. POM Sherman Tyson | 20390 | 959319 | 047 PCT |
| 4. DTS Jeremiah Williams | 5408 | 927673 | INT CIS |
| 5. POM Charles Alexander | 04377 | 937958 | DBBX |
| 6. POM Ricardo Gaztambide | 15655 | 951767 | TB DT12 |
| 7. DI Peter Rose | 00000 | 899782 | TB BX/Q |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. POM Israel Diaz | 00000 | 967483 | REC TNG |
| 2. SGT Yasmin Campusano | 01378 | 939982 | TB DT12 |
| 3. POM Andrew Nguyen | 13120 | 946057 | TB DT12 |
| 4. POM Yaw Offin | 03335 | 950973 | 052 PCT |
| 5. POM Richard Arce | 25247 | 946413 | TB DT12 |
| 6. POM Jose Espinal | 20244 | 963977 | TB DT12 |
| 7. POM Zachary Dolce | 00000 | 967485 | REC TNG |
| 8. DT2 Raymond Flood | 00744 | 899229 | ESS 03 |
| 9. POM Parminder Singh | 25633 | 967344 | REC TNG |
| 10. LT Shaun Tablante | 00000 | 943855 | 047 PCT |
| 11. POM Alexander Diaz | 20834 | 963008 | TB DT12 |
| 12. POM Prince Philip | 27679 | 965413 | 047 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------------|-----------|--------|----------|
| 13. POM Felix Tejada | 07675 | 964790 | 047 PCT |
| 14. POM Francisco Chica | 11939 | 955813 | 047 PCT |
| 15. POM Anthony Martinez | 25812 | 955131 | 047 PCT |
| 16. POF Rosibel Kery | 19293 | 963090 | 047 PCT |
| 17. POM Arismendi Mena | 07247 | 956919 | 047 PCT |
| 18. POF Alejandrin Castillo | 13913 | 928632 | 047 PCT |
| 19. POM Alexis Almanzar | 08609 | 957328 | 047 PCT |
| 20. POM Raffaele Nuzzi | 29478 | 967225 | REC TNG |
| 21. POM Sal Flores | 14666 | 948974 | ESS 03 |
| 22. POM Stephen Coffey | 08220 | 918860 | TB BX/Q |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|--|-----------------------------|
| A.POM Ricardo Gaztambide | Abuse: Police Officer Ricardo Gaztambide entered § 87(2)(b) § 87(2)(b) in the Bronx. | |
| B.POM Ricardo Gaztambide | Abuse: Police Officer Ricardo Gaztambide searched § 87(2)(b) § 87(2)(b) in the Bronx. | |
| C.POM Ricardo Gaztambide | Abuse: Police Officer Ricardo Gaztambide failed to provide individuals with a business card. | |
| D.POM Kermar Mckenzie | Abuse: Police Officer Kermar McKenzie entered § 87(2)(b) § 87(2)(b) in the Bronx. | |
| E.POM Kermar Mckenzie | Abuse: Police Officer Kermar McKenzie searched § 87(2)(b) § 87(2)(b) in the Bronx. | |
| F.POM Kermar Mckenzie | Abuse: Police Officer Kermar McKenzie failed to provide individuals with a business card. | |
| G.DTS Jeremiah Williams | Abuse: Detective Jeremiah Williams refused to provide his name to § 87(2)(b) | |
| H.DI Peter Rose | Abuse: Deputy Inspector Peter Rose supervised officers' threat to damage § 87(2)(b)'s property. | |
| I.DI Peter Rose | Abuse: Deputy Inspector Peter Rose directed officers to enter § 87(2)(b) § 87(2)(b) in the Bronx. | |
| J.DI Peter Rose | Abuse: Deputy Inspector Peter Rose directed officers to search § 87(2)(b) § 87(2)(b) in the Bronx. | |
| K.DI Peter Rose | Abuse: Deputy Inspector Peter Rose failed to provide individuals with a business card. | |
| L.POM David Cooper | Force: Police Officer David Cooper used a taser against § 87(2)(b) | |
| M.POM Sherman Tyson | Force: Police Officer Sherman Tyson used physical force against § 87(2)(b) | |
| N.POM Charles Alexander | Off. Language: Police Officer Charles Alexander made remarks to § 87(2)(b) based upon the gender of § 87(2)(b) | |
| O.POM Charles Alexander | Discourtesy: Police Officer Charles Alexander spoke discourteously to § 87(2)(b) | |
| P.POM Charles Alexander | Force: Police Officer Charles Alexander used physical force against § 87(2)(b) | |
| Q.POM Charles Alexander | Force: Police Officer Charles Alexander used physical force against § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| R.POM Charles Alexander | Force: Police Officer Charles Alexander used physical force against § 87(2)(b) | |
| S.POM David Cooper | Discourtesy: Police Officer David Cooper spoke discourteously to § 87(2)(b) | |

Case Summary

On August 28, 2019, Lieutenant Carmen Loperena of Transit District 12 reported this incident to IAB by phone on behalf of § 87(2)(b) generating original log number 2019-32588. On September 6, 2019, IAB forwarded this complaint to the CCRB.

On August 28, 2019, at approximately 10:25 a.m., § 87(2)(b) stole a gold chain from a subway passenger at the Gun Hill Road “2” station in the Bronx and fled on foot into § 87(2)(b) pursued by Police Officers Ricardo Gaztambide and Kermar McKenzie of Transit District 12. PO Gaztambide and PO McKenzie entered § 87(2)(b) § 87(2)(b) briefly searched the apartment for § 87(2)(b) and failed to provide business cards to the occupants (**Allegations A-C: Abuse of Authority, § 87(2)(g)** **Allegations D-F: Abuse of Authority, § 87(2)(g)** Officers proceeded to a hallway outside the entrance of § 87(2)(b) § 87(2)(b) Detective Jeremiah Williams, of the Criminal Intelligence Section but permanently assigned to the 47th Precinct, did not provide his name upon request to § 87(2)(b) one of the occupants of § 87(2)(b) (**Allegation G: Abuse of Authority, § 87(2)(g)** Deputy Inspector Peter Rose of Transit Borough Bronx/Queens directed officers to forcibly enter § 87(2)(b) prompting officers to threaten to break down the door and to subsequently enter and search the apartment without providing business cards to any occupants (**Allegations H-K: Abuse of Authority, § 87(2)(g)** § 87(2)(b) § 87(2)(b) leapt out of a § 87(2)(b) floor window and fled on foot while attempting to evade custody, fracturing his left ankle in the process. While attempting to apprehend § 87(2)(b) Police Officer David Cooper of the 47th Precinct fired his Taser, striking § 87(2)(b) and Police Officer Sherman Tyson of the 47th Precinct pulled § 87(2)(b) off of a fence and onto the ground (**Allegations L-M: Force, § 87(2)(g)**

Police Officer Charles Alexander of the 47th Precinct approached § 87(2)(b) called § 87(2)(b) a “bitch” and a “fucking piece of shit,” and used other iterations of “shit” and “fuck” while speaking to § 87(2)(b) (**Allegation N: Offensive Language, § 87(2)(g)** **Allegation O: Discourtesy, § 87(2)(g)** PO Alexander allegedly stomped on § 87(2)(b) s ankle (**Allegation P: Force, § 87(2)(g)** PO Alexander lifted and carried § 87(2)(b) by his ankles and roughly dropped his ankles to the ground. PO Alexander also twice grabbed § 87(2)(b) s fractured left ankle, frisked it, and took his left shoe on and off, causing substantial pain (**Allegation Q: Force, § 87(2)(g)** PO Alexander allegedly squeezed § 87(2)(b) s testicles while frisking him, causing pain (**Allegation R: Force, § 87(2)(g)**

After § 87(2)(b) s apprehension, PO Cooper told § 87(2)(b) not to “talk shit” and told her to “go get a job” (**Allegation S: Discourtesy, § 87(2)(g)** § 87(2)(b) was arrested and charged with grand larceny and other crimes.

The investigation obtained extensive video footage of this incident, including 31 BWC videos (**Board Review 01-31**), and CCTV footage capturing PO Cooper’s use of the Taser (**Board Review 32**). All references to video evidence below refer to the time-stamp in the video player, and not to any on-screen clock embedded in the footage itself.

This case was reassigned from Inv. Andrew Ridge to the undersigned on August 24, 2020, after Inv. Ridge left the CCRB. As noted above, § 87(2)(g) Alexander has since been reassigned to Detective Borough Bronx.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Ricardo Gaztambide entered § 87(2)(b) in the Bronx.

Allegation (B) Abuse of Authority: Police Officer Ricardo Gaztambide searched § 87(2)(b) in the Bronx.

Allegation (D) Abuse of Authority: Police Officer Kermar McKenzie entered § 87(2)(b) in the Bronx.

Allegation (E) Abuse of Authority: Police Officer Kermar McKenzie searched § 87(2)(b)
§ 87(2)(b) in the Bronx.

Allegation (F) Abuse of Authority: Police Officer Kermar McKenzie failed to provide individuals with a business card.

The investigation was unable to interview PO McKenzie before he resigned from the NYPD on July 10, 2020 (**Board Review 33**).

New York City Administrative Code 14-173 (Board Review 35) directs that, when conducting a home search based on an occupant's consent, officers should inform the occupant that he or she is being asked to voluntarily, knowingly, and intelligently consent to search and that no search will be conducted absent consent, and to ensure that the occupant understands this. This guidance need not apply when exigent circumstances require immediate action by law enforcement. New York City Administrative Code 14-174 (Board Review 36) directs members of the NYPD to offer business cards to occupants following a home search. An officer is not required to comply with this when exigent circumstances require immediate action by such officer.

PO Gaztambide obtained verbal consent from an occupant to enter the apartment and examine the rear window. § 87(2)(g)

§ 87(2)(b) § 87(2)(b)

Allegation (G) Abuse of Authority: Detective Jeremiah Williams refused to provide his name to

§ 87(2)(b)

BWC footage from PO McKenzie (**Board Review 08**) shows that, after PO Gaztambide and PO McKenzie exited the apartment on the § 87(2)(b) floor, § 87(2)(b) and § 87(2)(b) opened the door to the apartment on the § 87(2)(b) floor and spoke to Det. Williams. This conversation begins at 24:00 in the BWC footage. At 26:35, the following verbatim exchange occurs between § 87(2)(b) and Det. Williams:

§ 87(2)(b) “What’s your name?”

Det. Williams: “Jay.”

§ 87(2)(b) “Jay what?”

Det. Williams: “Will.”

§ 87(2)(b) “Jay Will?”

Det. Williams: “Yes, § 87(2)(b) knows me.”

§ 87(2)(b) “All right. I’ll make sure I tell your’ all precinct [*sic*].”

Det. Williams: “Good.”

Det. Williams and § 87(2)(b) remained in the hallway together for several minutes following this exchange.

The investigation was unable to obtain a statement from § 87(2)(b)

Det. Williams was not interviewed until approximately 20 months after the incident. He testified (**Board Review 37**) that he did not recall entering the building and speaking to § 87(2)(b) and § 87(2)(b) although he stated that § 87(2)(b) and § 87(2)(b) both knew him from previous incidents, as § 87(2)(b) had served as a confidential informant or source of information for Det. Williams for a number of years. Det. Williams stated that he habitually introduces himself to civilians as “Detective Jeremiah Williams” and not as “Jay Will.” Upon reviewing the footage discussed above, Det. Williams confirmed that he heard himself provide his name to § 87(2)(b) as “Jay Will.” Det. Williams stated that he had done so because he “didn’t have time to have a whole conversation,” given that the perpetrator of a robbery was at large and he did not know if any civilians on scene were armed. Det. Williams noted that this was a “dangerous situation” and he needed to focus on maintaining safety. Det. Williams did not have any other reason for providing his name as “Jay Will.”

NYPD Patrol Guide Procedure 203-09 (**Board Review 38**) directs an officer to courteously and clearly state his or her rank, name, shield number and command, or otherwise provide them, to anyone who requests.

The investigation did not credit Det. Williams’ claim that he could not accurately state his name upon request—it would not have taken him any longer to simply state his full name and rank than it did for him to say his name was “Jay Will.” His prior relationship with § 87(2)(b) also did not free him from the requirement to accurately state his name upon request, especially as he claimed no such prior relationship with § 87(2)(b) § 87(2)(g)

Allegation (H) Abuse of Authority: Deputy Inspector Peter Rose supervised officers' threat to damage § 87(2)(b) s property.

Allegation (I) Abuse of Authority: Deputy Inspector Peter Rose directed officers to enter § 87(2)(b) § 87(2)(b) in the Bronx.

Allegation (J) Abuse of Authority: Deputy Inspector Peter Rose directed officers to search § 87(2)(b) § 87(2)(b) in the Bronx.

Allegation (K) Abuse of Authority: Deputy Inspector Peter Rose failed to provide individuals with a business card.

It is undisputed that ESU officers approached the door of the § 87(2)(b) floor apartment with the intention of forcibly entering the residence in order to apprehend § 87(2)(b) It is further undisputed that, after § 87(2)(b) and § 87(2)(b) opened the door of the apartment, ESU officers entered the apartment and

searched for § 87(2)(b). There is no indication that any officer offered a business card to the occupants of the apartment.

§ 87(2)(b) testified that, while he was hiding inside the apartment, he heard an officer knock on the door and announce that he would kick down the door if the occupants did not open it. § 87(2)(b) subsequently heard officers entering the apartment, prompting him to jump out of a § 87(2)(b) floor window to flee.

BWC footage from Sergeant Yasmin Campusano of Transit District 12 (**Board Review 16**) shows that, after additional officers and supervisors arrived on scene, Sgt. Campusano, Lieutenant Shaun Tablante of the 47th Precinct, PO McKenzie, and Police Officer Stephen Coffey of Transit Borough Bronx/Queens gathered to discuss how to apprehend § 87(2)(b). This conversation begins at approximately 8:00 in the footage. Sgt. Campusano and the other members of the group determined that they could not legally make forced entry into the apartment to apprehend § 87(2)(b). Deputy Inspector Peter Rose of Transit Borough Bronx arrived on the scene. At 10:17 in the footage, DI Rose informed Sgt. Campusano that he had decided that officers should make forced entry into the apartment. At 16:10, DI Rose directed ESU officers to “take the door.”

§ 87(2)(g)

As DI Rose was the ranking officer in charge and clearly made the decision that officers should forcibly enter and search the apartment, the investigation determined that he was the proper subject for these allegations and that he was responsible for ensuring that business cards were offered to the apartment occupants. § 87(2)(g)

Allegation (L) Force: Police Officer David Cooper used a taser against § 87(2)(b)

Allegation (M) Force: Police Officer Sherman Tyson used physical force against § 87(2)(b)

It is undisputed that, after § 87(2)(b) jumped out of a § 87(2)(b) story window, he landed on the roof of a lower adjoining building, jumped down to the ground, ran through several adjoining properties, and attempted to scale a fence into an adjacent yard. While § 87(2)(b) was running, PO Cooper deployed his Taser, striking § 87(2)(b) with a single prong. This portion of the incident can be viewed beginning at approximately 29:32 in PO Cooper’s BWC footage (**Board Review 01**). While § 87(2)(b) was attempting to scale the fence, PO Tyson pulled him off of the fence to the ground.

§ 87(2)(b) testified that he injured his right heel while jumping from the § 87(2)(b) story window. He claimed that he suffered the more significant injury to his right ankle only after an officer stomped on him. As will be explained below, the investigation found that § 87(2)(b) actually fractured his left ankle, and that he did so when he jumped from the window. § 87(2)(b) testified that the Taser prong did not penetrate his clothing and he did not realize that the Taser had been deployed until after he was handcuffed. § 87(2)(b) testified that he fell while attempting to scale a fence; he did not report that PO Tyson pulled him to the ground from the fence.

PO Cooper testified (**Board Review 39**) that, while responding to the scene, he learned that § 87(2)(b) had committed a robbery, that he received a description of § 87(2)(b) and that he may also have learned that § 87(2)(b) was armed. He ran after § 87(2)(b) after he jumped from the window. PO Cooper ordered § 87(2)(b) to stop, but § 87(2)(b) did not comply. PO Cooper deployed his Taser against § 87(2)(b) because § 87(2)(b) was wanted for a violent crime and was fleeing custody. PO Cooper prepared a TRI Report (**Board Review 40**) which was consistent with his testimony to the CCRB.

PO Tyson testified (**Board Review 41**) that he had very little memory of this incident, although he recalled being present when § 87(2)(b) was apprehended. At the time of the incident, PO Tyson prepared a TRI Report (**Board Review 40**) which indicates that he pulled § 87(2)(b) to the ground while § 87(2)(b) was attempting to scale a fence.

NYPD Patrol Guide Procedure 221-01 (Board Review 42) states that force may be used when it is reasonable to ensure the safety of a member of the service or a § 87(2)(b) person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. The reasonableness of force is assessed, in part, by the actions taken by the subject, the immediacy of the perceived threat of harm to the subject, and whether the subject is attempting to evade arrest by flight. NYPD Patrol Guide Procedure 221-08 (Board Review 43) states that a Taser may be deployed when it constitutes the reasonable amount of force necessary to overcome resistance when effecting an arrest. A Taser may be used during an apprehension in order to prevent a subject from physically injuring himself or herself.

§ 87(2)(b) was fleeing custody, had sustained a serious injury while jumping out of a § 87(2)(b) story window, and risked further injury to himself while continuing to flee. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (N) Offensive Language: Police Officer Charles Alexander made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

Allegation (O) Discourtesy: Police Officer Charles Alexander spoke discourteously to § 87(2)(b)

Allegation (P) Force: Police Officer Charles Alexander used physical force against § 87(2)(b)

Allegation (Q) Force: Police Officer Charles Alexander used physical force against § 87(2)(b)

Allegation (R) Force: Police Officer Charles Alexander used physical force against § 87(2)(b)

As noted above, § 87(2)(b) claimed that, after PO Alexander removed the chain from his sock, PO Alexander stomped on § 87(2)(b)'s injured *right* ankle. PO Alexander then frisked § 87(2)(b) and squeezed § 87(2)(b)'s testicles from outside his clothing while doing so. PO Alexander lifted § 87(2)(b) by his ankles, which § 87(2)(b) believed was intended to cause him further pain. § 87(2)(b) testified that PO Alexander called him a "piece of shit," but did not make any further allegations of profanity or offensive language.

The Pre-Hospital Care Report indicates that § 87(2)(b) told EMS personnel on scene that he felt a "pop" sensation in his left ankle when he jumped from the window and landed on the roof (see Privileged Records). Neither that report, nor § 87(2)(b)'s medical records from § 87(2)(b) Hospital, indicate that he ever alleged that his ankle injury was caused by anything other than his fall onto the roof. His hospital records confirm that he sustained an ankle fracture of sufficient severity that it required surgery to repair.

The BWC footage shows that officers handcuffed § 87(2)(b) without further incident after PO Tyson pulled him to the ground. § 87(2)(b) immediately began to complain of the injury to his ankle. Numerous officers, including PO Alexander, approached § 87(2)(b)

BWC footage from Police Officer Alexis Almanzar of the 47th Precinct (**Board Review 28**) captures PO Alexander interacting with § 87(2)(b) beginning at 00:30. PO Alexander's BWC footage (**Board Review 27**), also beginning at 00:30, captures much of the same interaction, but begins several seconds after PO Almanzar's footage. The footage shows that officers ordered § 87(2)(b) to get up and attempted to lift him up, and he cried out that he could not stand due to an injury to his left leg. § 87(2)(b) was visibly in pain at this time. PO Alexander responded, "You just fucking ran...C'mon, stop being a bitch." § 87(2)(b) continued to complain of pain to his leg, and PO Alexander said, "Yeah, where the stolen chain is, no problem. Let me get somebody else's property out of you first. Fucking piece of shit."

After apparently removing a chain from § 87(2)(b)'s sock, PO Alexander grasped hold of § 87(2)(b)'s ankles and lifted his legs off the ground as other officers lifted § 87(2)(b)'s shoulders. The officers carried § 87(2)(b) for several yards, with PO Alexander continuing to lift § 87(2)(b) by his ankles. While carrying § 87(2)(b) in this manner, PO Alexander informed DI Rose that § 87(2)(b) had stated that his leg was broken and he could not walk. DI Rose immediately directed the officers to place § 87(2)(b) on the ground to await an ambulance. As § 87(2)(b) screamed in pain, PO Alexander roughly dropped his legs to the ground. § 87(2)(b) cried, "C'mon, why'd you have to do that man?" PO Alexander replied, "Why you gotta rob people?" Shortly thereafter, § 87(2)(b) begged to the assembled officers, "Please don't touch my leg, yo!" § 87(2)(b) continued to cry out in pain while lying on the ground.

PO Alexander turned away and used his radio to inform the dispatcher of the address to which an ambulance should respond, and he remarked of § 87(2)(b) "Something's broken." PO Alexander rejoined the group of officers around § 87(2)(b) as § 87(2)(b) continued to beg officers not to touch his leg. § 87(2)(b) also asked the officers to adjust his handcuffs, and PO Alexander responded in an audibly mocking tone, "Aww, we're sorry you're uncomfortable. Aww, they're uncomfortable? Aww." PO Alexander then asked § 87(2)(b) "You got any more stolen shit? Search him." PO Alexander bent over and apparently began touching § 87(2)(b) the angle of the BWC did not capture exactly how PO Alexander touched § 87(2)(b) in that moment. § 87(2)(b) exclaimed, "That's my nuts, yo!" and PO Alexander replied, "Yeah, alright." § 87(2)(b) said, "What the fuck you grab my nuts for?" PO Alexander said, "Spit in my face again, see what happens." At the same time, PO Alexander grabbed § 87(2)(b)'s left ankle, lifted it off the ground, removed his left shoe, and felt all over his ankle, causing § 87(2)(b) to cry out in pain. § 87(2)(b) then protested that he did not spit, and he remarked again that PO Alexander had grabbed his "balls." After confirming that the shoe was empty, PO Alexander grabbed and lifted § 87(2)(b)'s left ankle again and attempted to force the shoe back onto his foot. § 87(2)(b)'s screams grew louder, and he begged PO Alexander to stop. PO Alexander then removed and searched § 87(2)(b)'s right shoe. PO Alexander turned away again, and § 87(2)(b) could be heard in the background complaining to other officers about being picked up by his leg and slammed down after he had already told them that his leg was injured.

Several minutes later, beginning at 05:30 in PO Alexander's footage, § 87(2)(b) stated that he had committed the robbery because he had no money and needed to support his son, and PO Alexander replied, "I don't have no money either. I have three sons that need food, but I'm not out here committing crimes. I got a fucking job. I got an education and a job, it's crazy."

The BWC footage shows that neither PO Alexander, nor any other officer, ever stomped on § 87(2)(b)'s ankle as he alleged.

In his CCRB testimony, PO Alexander confirmed (**Board Review 44**) that he saw § 87(2)(b) jump from the § 87(2)(b) story window, and that he heard § 87(2)(b) complain of an injury to his ankle upon first approaching him. PO Alexander stated that he lifted § 87(2)(b) by his ankle despite § 87(2)(b)'s

reported injury because there was no other way to move § 87(2)(b) PO Alexander removed the chain from § 87(2)(b)'s sock and frisked and searched § 87(2)(b) for weapons or additional stolen property. PO Alexander denied stomping on § 87(2)(b)'s ankle or squeezing § 87(2)(b)'s testicles, although he acknowledged frisking these areas. PO Alexander did not specifically recall using profanity while speaking to § 87(2)(b) although he acknowledged that he may have done so. After reviewing the BWC footage detailed above, PO Alexander stated that he did not hear himself refer to § 87(2)(b) as a “bitch” and did not know whether he said this, but he acknowledged that he used the other profanity audible in the video. PO Alexander stated that he had used profanity in reaction to § 87(2)(b)'s actions and statements and that he did not have any other reason for doing so.

Based upon the BWC footage, the investigation determined that PO Alexander did not stomp on § 87(2)(b) as alleged. The footage does show § 87(2)(b) making a contemporaneous exclamation that PO Alexander touched his testicles through his clothing. However, the investigation lacked sufficient evidence to determine specifically whether PO Alexander squeezed them in a manner causing pain as alleged, or whether he touched them through the clothing in a manner consistent with a frisk.

PO Alexander lifted § 87(2)(b) by his ankles, roughly dropped his ankles to the ground, grabbed and squeezed his left ankle multiple times, removed § 87(2)(b)'s left shoe, and tried to force the shoe back onto § 87(2)(b)'s foot. PO Alexander was specifically aware, prior to taking these physical actions, that § 87(2)(b) had fallen from a great height, that he was in intense pain, that he required emergency medical attention, that he claimed to have a broken leg, and that he repeatedly begged officers not to touch his left ankle. Indeed, § 87(2)(b) cried out in pain as PO Alexander took these actions. The investigation did not credit PO Alexander's claim that he had to touch § 87(2)(b) in this manner to move him and to search for weapons or other stolen property. § 87(2)(b) was restrained in custody, was not physically resisting, and was surrounded by numerous officers—there was no risk that he might access a weapon on his person, and there was otherwise no reason that he had to be searched so roughly and with such speed. At the very least, it was incumbent upon PO Alexander to accomplish these tasks without causing § 87(2)(b) needless pain and without risking further injury to § 87(2)(b)'s ankle. Instead, the footage shows that PO Alexander displayed a callous disregard for § 87(2)(b)'s physical well-being.

Moreover, PO Alexander's contextual statements strongly indicate that he handled § 87(2)(b)'s ankle in a manner calculated to cause § 87(2)(b) further pain. PO Alexander responded to § 87(2)(b)'s complaints of pain by insulting him, mocking him, and implying that § 87(2)(b) did not deserve to be treated gently given the crime he committed. Most tellingly, PO Alexander grabbed and squeezed § 87(2)(b)'s ankle just after he believed § 87(2)(b) had spit in his direction, and PO Alexander prefaced that physical action with an implied threat of, “...see what happens.” § 87(2)(g)

§ 87(2)(g)

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Members of the NYPD are forbidden to use any level of force to punish or retaliate against a subject. Members of the NYPD are forbidden to use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape, or to overcome active physical resistance or assault (**Board Review 41**). NYPD Patrol Guide Procedure 203-09 states that officers must interact with members of the public in a professional manner (**Board Review 38**).

PO Alexander called § 87(2)(b) a “bitch” and a “fucking piece of shit,” and he repeatedly used the words “shit” and “fuck” while speaking to § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

The investigation determined that PO Alexander did not stomp on § 87(2)(b)'s ankle as alleged. § 87(2)(g)

As explained above, the investigation determined that PO Alexander caused substantial pain to § 87(2)(b) by roughly handling his fractured ankle after § 87(2)(b) was in custody. § 87(2)(g)

As explained above, the investigation was unable to determine whether PO Alexander squeezed § 87(2)(b)'s testicles in a manner consistent with a use of physical force. § 87(2)(g)

Allegation (S) Discourtesy: Police Officer David Cooper spoke discourteously to § 87(2)(b)
PO Cooper's BWC footage (**Board Review 01**) shows that, after § 87(2)(b) was apprehended, PO Cooper interacted with § 87(2)(b) in front of the building. Their interaction begins at approximately 32:10. In response to various insulting and profane remarks made by § 87(2)(b) PO Cooper said to her, "If you want to make comments, don't talk shit." He also told her, "Go get a job."

PO Cooper initially did not recall making the profane remark to § 87(2)(b) but he confirmed that he did so after reviewing the BWC footage discussed above.

NYPD Patrol Guide Procedure 203-09 states that officers must interact with members of the public in a professional manner (**Board Review 38**).

Regardless of whether § 87(2)(b) was insulting toward PO Cooper, he was required to remain professional. Instead, he spoke discourteously toward her by using profanity and by telling her to get a job. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 45**).
- § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 47**).
- PO Alexander has been a member of service for 15 years and has been subject to 12 additional CCRB complaints and 24 allegations, none of which was substantiated.
- PO Cooper has been a member of service for five years and has been a subject in one previous CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Gaztambide has been a member of service for nine years and this is the first CCRB complaint to which he has been a subject.
- PO McKenzie was a member of service for five years and this was the only CCRB complaint to which he was a subject.

- PO Tyson has been a member of service for five years and has been subject to three previous CCRB complaints and five allegations, one of which was substantiated:
 - 201707857 involved a substantiated allegation of a forcible removal to the hospital against PO Tyson. The Board recommended Instructions and the NYPD imposed Instructions.
- Det. Williams has been a member of service for 20 years and has been subject to 22 additional CCRB complaints and 66 allegations, five of which were substantiated:
 - 201900918 involved substantiated allegations of failure to provide business card and a strip search against Det. Williams. The Board recommended Charges and the NYPD imposed Instructions.
 - 201900625 involved a substantiated allegation of search of premises against Det. Williams. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - 200704005 involved substantiated allegations of stop and frisk against Det. Williams. The Board recommended Charges and the NYPD imposed no discipline.
 - § 87(2)(g) [REDACTED]

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- A request for Notice of Claim was submitted to the New York City Office of the Comptroller on May 31, 2021. Any responsive Notice of Claim will be added to the case file upon receipt.

- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]

Squad: 5

| | | |
|---------------------------------|--|-----------------------------|
| Investigator: <u> DG </u> | <u> IM Giansante for SI Julian Phillips </u> | <u> July 7, 2021 </u> |
| Signature | Print Title & Name | Date |

| | | |
|---|------------------------------------|-----------------------------|
| Squad Leader: <u> Daniel Giansante </u> | <u> IM Daniel Giansante </u> | <u> July 7, 2021 </u> |
| Signature | Print Title & Name | Date |

| | | |
|-----------------|--------------------|-------|
| Reviewer: _____ | _____ | _____ |
| Signature | Print Title & Name | Date |